IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1757 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BAROT SAROJBEN RAMSHKUMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1757 of 2003

MR AM RAVAL for Petitioner No. 1

Mr. V.M. Pancholi, AGP for Respondent No. 1-2,4

NOTICE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 26/02/2004

ORAL JUDGEMENT

The petitioner, who is serving as an Assistant Teacher with respondent No.3 Institution, is aggrieved by the alleged inaction on part of the respondents in not accepting her voluntary retirement application and non-issuance of qualifying Service Certificate and has therefore prayed for following reliefs;

"13. On the grounds stated herein above and those that may be urged at the time of hearing, Your Lordships may be pleased to issue writ of Mandamus, a Writ of Certiorari or any other Writ directing the Respondents-

A. to direct the respondent No.2 to issue Qualifying Service Certificate and to permit the petitioner to retire from 15th February 2003.

B. To declare that the petitioner is entitled to voluntary retirement on completion of 20 years services as per Government own Resolution dated 11th October, 1989 and is entitled to pensionary benefits as per Government GR dated 14.8.1984.

C. To grant the consequential reliefs of petitioner's request of voluntary retirement from 15th February 2003 as legal and entitled and to direct the Respondents to act accordingly.

D. Any other relief deemed fit, just and proper in the circumstances of this case.

14. Pending admission, hearing and disposal of this petition, Your Lordships may be pleased to issue injunction directing the Respondents to permit the petitioner to voluntary retire from 15th of February 2003."

2. As can be seen from Para 8 of Affidavit-in-Reply, there is no dispute that the petitioner's case is covered by a Resolutions dated 14th August 1984 and 1st May 1985 for entitlement to Pension Scheme and Voluntary Retirement Scheme. The only dispute lies is on question whether the petitioner has complied with the requirements for the benefits of the scheme.

3. It is vehemently contended by the learned advocate on behalf of the petitioner that the petitioner had tendered an application for voluntary retirement much in advance, but because of inaction on part of respondents it was not accepted within the time limit for want of certain documents which are issued by respondent

authorities. The petitioner, therefore, gracefully indicated her willingness to work till 15th February but the respondents insist for a fresh notice of 3 months which is not legal and therefore this petition. He has placed reliance on the decision of the Apex Court in P.Lal Vs. Union of India And Others - (2003) 3 S.C.C. 393, and submitted that fresh notice of 3 months is not required once it is given and notice period is over, no further exercise is required to be undertaken by the petitioner. He, therefore, urged that this petition may be entertained and the reliefs should be granted.

4. Learned AGP, Mr. Pancholi appearing for respondents No. 1, 2 and 4 submitted that it is the laxity on part of the petitioner that has resulted into the situation. There was no inaction or delay on part of the respondent authorities. The application of the petitioner for retirement with effect from 1st December 2002 was not allowed only because some important objections which were required to be removed by the petitioner were not removed at the relevant time. This is indicated by Annexure R/I. Mr. Pancholi also submitted that unless the petitioner supplies the certificate of her services being pensionable, her application for Voluntary Retirement could not be accepted and that was not issued because of want of certain documents.

According to Mr. Pancholi, the petition cannot be entertained if the communications from the petitioner are examined. He has drawn attention of this Court to Annexure R/II, communication dated 21st January 2003, where she states that she had earlier indicated that she wants to take voluntary retirement with effect from 1st December 2002 but because requisite certificate has not been received for voluntary retirement she wants to continue on duty till the certificate is received and requested the Principal to undertake the process expeditiously. Thereafter, by Annexure R/III, by communication dated 1st February 2003 the petitioner expressed desire to voluntarily retire with effect from 15th February 2003. Mr. Pancholi submitted that the notice is therefore not of 3 months as required under the Rules but only of 15 days, and this was indicated by respondent No.4 to respondent No.2 by communication dated 24th February 2003. He has drawn attention to Annexure R/VII from respondent No.4 to respondent No.3, where it is indicated that the employee seeking voluntary retirement should not be on leave without pay during the period of notice and the date of retirement and therefore the application of the petitioner was returned with a

direction to send it again after the petitioner resumed her duties. This communication is dated 31st of January 2003. Mr. Pancholi has then drawn attention of this Court to Annexure R/VII wherein it is indicated that the petitioner has worked in the Institution from 1st February 2003 to 15th February 2003 and thereafter she is remaining absent without any intimation to the Institution. She has intimated her decision by communication dated 27th February 2003 that she has voluntarily retired from the Institution with effect from 15th February 2003 and as per the information of the Institution the petitioner has gone to America on 1st of March 2003. Mr. Pancholi submitted that considering all these aspects, the petition may not be entertained.

5. Having regard to rival side contentions, it is amply clear that the petitioner had applied for voluntary retirement with effect from 1st December 2002 by communication dated 11th July 2002 Annexure "D". By Resolution dated 27th July 2002, the Institution Respondent No.3 resolved to send the petitioner's application for voluntary retirement to respondent No.2 for sanction.

6. Thereafter, it is clear from communication dated 21st January 2003 Annexure R-II that the petitioner indicated to respondent No.3 that though she had sought voluntary retirement with effect from 1st December 2002 she wants to continue in service as the certificate is not received and respondent No.3 may expedite the process. The effect is that before the voluntary retirement application was accepted, it was withdrawn by the petitioner and she clearly indicated her willingness to continue in the service. Therefore, when she applies on 1st February 2003 (Annexure R-III) for retirement with effect from 15th February 2003, it cannot be said that the notice is for requisite period of three months. Her earlier notice dtd. 11.7.2002 was for voluntary retirement from 1.12.2002, which she revoked by indicating her willingness to work and therefore cannot be considered as a valid notice for retirement from 15.2.2003.

At this stage, it would be appropriate to refer to the decision of the Apex Court in P. Lal (Supra). Learned advocate for the petitioner placed reliance on observations in Para 27 of the Judgment, where Their Lordships observed that;

".....As has been set out in Shambhu Murari case

> and Bank of India case an employee can withdraw his application for voluntary retirement before the effective date. The effective date would necessarily be the date on which the retirement takes effect. The request, which Respondent 3 had made by his letter dated 5-5-1993, was to be allowed to retire voluntarily with immediate effect. He had also deposited Rs. 30,870 in lieu of three months' notice. Thus so far as Respondent 3 was concerned, the effective date was 5-5-1993. Of course Rule 16(2-A) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 provides that a notice of retirement had to be accepted by the Government of India. In this case, the Government of India accepted the request on 2-3-1995 and permitted Respondent 3 to retire with effect from May 1993. The moment the Government of India accepted the notice the retirement became effective. The relationship of master and servant came to an end. We are unable to accept the submission that the relationship of master and servant did not terminate till the acceptance was communicated to Respondent 3....." Once such a notice is given it merely has to be accepted by the Government of India. The moment it is accepted the retirement would become effective. If any other view is taken it would lead to absurd results."

It is, thus, clear that voluntary retirement would become effective after it is accepted and it can be withdrawn before it is accepted. In the instant case, before it is accepted, for all practical purposes, the petitioner has shown willingness to continue in service and has, in fact, joined the service as can be seen from Annexure R-II dated 21st January 2003.

7. It is contended that the retirement became effective from 1st December 2002 and communication R-II is of 21st January 2003 and therefore there is a gap between the two. However, this contention does not hold good because, by communication dated 21st January 2003, the petitioner has herself expressed her willingness to continue in the service. It also transpires that the interregnum period has been treated as 'leave without pay'. Be that as it may, the fact remains that unless the voluntary retirement application is accepted, it cannot become effective, and, even as on today, the application is not accepted. Therefore, this contention cannot be accepted that the retirement became effective

from 1st December 2002. In fact, if that was so the petitioner would not have worked thereafter.

8. It would also be appropriate now to refer to Prayer Clause, where the petitioner seeks a direction on respondent No.2 to issue Qualifying Service Certificate and to permit the petitioner to retire from 15th Feb. 2003. Whereas, in fact this direction should be sought on respondent No.3. Be that as it may, the petition cannot be rejected on this technical ground by taking a harsh stand. But it is clear from Annexure R/V that it is required to be issued by respondent No.4. There is no denial on part of respondent No.4 to grant of the Certificate, but certain compliance has to be made by the petitioner, and, if that is not done by the petitioner, the relief sought in the petition cannot be granted. As is indicated above, the petitioner's earlier notice of retirement Annexure 'D' became ineffective by virtue of Annexure R-II. Even her services are continued and interregnum period is considered as leave without pay. Under the circumstances, the petitioner cannot take a stand that her 1st notice of July 2002 would be valid once it is given. Reliance placed on the Judgment also does not help the petitioner as facts of the case are different and the principle emerging therefrom is that voluntary retirement application becomes effective from the date it is accepted, and, in the instant case, it is nobody's case that the petitioner's application is accepted by the respondent authorities. The petition, therefore, is devoid of merits. This Court refrains from making any observation regarding conduct of the petitioner of unilaterally taking voluntary retirement with effect from 15th February 2003 and abondoning the office and going abroad presumably without intimating the authorities concerned. The petition, therefore, stands dismissed. Notice is discharged. No costs.

9. It is clarified that this Court does not intend to, for a moment, impress or convey that the petitioner is not entitled to voluntary retirement. The petition is rejected for the reasons stated above. If the petitioner complies with the requirement, it would be open for the respondent authorities to take appropriate decision on question of voluntary retirement of the petitioner.

[A.L. Dave, J.]

rmr.